

State of Missouri

Office of Secretary of State

Case No. AP-07-01

IN THE MATTER OF:

BARRINGTON CAPITAL MANAGEMENT, INC.
CRD #105005,

Respondent.

CONSENT ORDER

SUMMARY OF ALLEGATIONS

1. The Missouri Securities Division ("Division") alleges that Barrington Capital Management ("Barrington") employed a solicitor, Michael Glenn Grimes ("Grimes"), who the Division alleges acted as an unregistered investment adviser representative and violated Sections 409.4-404(a), and 409.5-501, RSMo. (Cum. Supp. 2005).
2. Respondent and the Division desire to settle the allegations and the matters raised by the Securities Division relating to Respondent's alleged activities.

CONSENT TO JURISDICTION

3. Respondent and the Division stipulate and agree that the Commissioner has jurisdiction over Respondent and these matters pursuant to the Missouri Securities Act, Chapter 409, *et seq.*
4. Respondent and the Division stipulate and agree that the Commissioner has authority to enter this Consent Order pursuant to § 409.6-604(h), RSMo. (Cum. Supp. 2005), which provides:

The commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act.

WAIVER AND EXCEPTION

5. Respondent waives its right to a hearing with respect to this matter.
6. Respondent waives any rights that it may have to seek judicial review or otherwise challenge or contest the terms and conditions of this Order. Respondent specifically forever releases and holds harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.

7. Respondent stipulates and agrees with the Division that, should the facts contained herein prove to be false or incomplete, the Division reserves the right to pursue any and all legal or administrative remedies at its disposal.

CONSENT TO COMMISSIONER'S ORDER

8. Respondent and the Division stipulate and agree to the issuance of this Consent Order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
9. Respondent neither admits nor denies the allegations made by the Division but consents to the Commissioner's Findings of Fact and Conclusions of Law as set forth below solely for the purposes of this proceeding and any proceeding that may be brought to enforce the terms of this Consent Order.
10. Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without a factual basis.
11. Respondent agrees that Respondent is not the prevailing party in this action since the parties have reached a good faith settlement.

COMMISSIONER'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

12. Barrington, CRD #105005, is a federal covered investment adviser with a primary business address of 470 Miller Road, Barrington, Illinois 60010. Barrington has notice filed as a federal covered investment adviser in the State of Missouri.
13. Grimes is an insurance agent licensed in Missouri to sell life insurance, variable contracts, accident, and health insurance coverage. His business address is Suite 202, 12400 Olive Blvd., St. Louis, Missouri 63141.
14. At all times relevant to this matter, Grimes was formally engaged as a solicitor for Barrington. In the solicitor agreement, Barrington required that Grimes would "use only . . . marketing materials provided by and approved by [Barrington]."
15. Prior to his employment with Barrington, Grimes [\[1\]](#) had entered into three (3) prior Consent Orders with the Missouri Securities Division.
16. In the third consent order issued against Grimes, the Missouri Commissioner of Securities prohibited Grimes from offering investment advice in the State of Missouri.
17. Barrington was aware of these prior actions by the Division.
18. Grimes used marketing materials that included, in part, the following:
 - a. Brochure for Grimes stating Financial Solutions & Associates, Inc. is a "St. Louis-based wealth planning firm"; Grimes's role "is providing clients pre- and post-retirement financial planning services" which include personal financial planning, investment allocation strategies, retirement plan distribution analysis, and retirement income analysis [Exhibit A];

- b. Facsimile flyer promoting an investment with a “guaranteed 13.5% return” [Exhibit B]; and
 - c. Website indicating that Financial Solutions & Associates, Inc. is a “fee-only financial planning firm,” . . . compensated “solely by fees paid by their clients and do not accept commissions or compensation from any other source. As Fee-Only planners, we believe there is a significant conflict of interest if an advisor stands to gain financially from the purchase of any investment or insurance product he or she recommends to the client.” . . . “Financial Solutions & Associates, Inc. charges a reasonable, quarterly management fee based on the value of a clients account” . . . “As a fee-only advisor, our compensation is a flat percentage of a client’s account value. We do not earn any money from commissions, trailers, or markups. We earn money only if their account grows or if we gain new clients” [Exhibit C].
19. On January 26, 2006, a Missouri resident (“MR”) attended a seminar conducted by Grimes in St. Louis, Missouri. The seminar was entitled, “More Money, Less Taxes,” and was directed to people at, or near, retirement [See Exhibit D]. At that seminar, Grimes made, in part, the following statements and/or claims:
- a. General Statements: “My company is a wealth-planning firm. . . [It is] a conflict of interest to work with a commissioned salesperson. . . All accounts are discretionary accounts. . . A flat fee is deductible; commissions aren’t. . . You are only charged a flat fee for our services; no commissions. . . We are discretionary money managers. . . Trust your assets with me and Dave Ware.”
 - b. Regarding Mutual Funds: “No one really knows what the various costs are in a mutual fund. . . Fund companies don’t tell you about transaction costs; I have taken two hours to search a prospectus for all the costs. It would take the average person days. . . A ‘Buy and Hold’ strategy doesn’t make sense if the companies go out of business. . . . Annuity expenses are much lower than mutual fund expenses.”
 - c. Additional Statements: “I [Grimes] wouldn’t think of doing anything less than full financial planning for my clients. . . [David] Ware and I split the fees; we do not take any commissions off of any of the work we do or products we sell. . . . A portfolio review and financial plan is free; there is no charge for meetings or preparation of the plan; the only charge is when you decide to work with us and become a client. . . Not one of our clients has ever lost any of their principal if they take our advice.”
20. After the seminar, MR scheduled a private appointment with Grimes to review MR’s investment portfolio and prepare a financial plan for MR. At that meeting, Grimes completed a “Confidential Investment Planning Guide,” based on questions Grimes addressed to MR. Although the guide was presented as the primary tool upon which MR’s financial plan would be based, the guide did not solicit any information regarding MR’s net worth, liquid net worth, tax bracket, current investment strategy, current portfolio diversification, risk tolerance, details concerning MR’s health, or MR’s long-term care insurance needs, nor future plans and goals. However, the guide did seek to identify MR’s assets.

21. During a second meeting held approximately 10 days later, Grimes presented MR with MR's Personalized Financial Plan [Exhibit E]. The recommendations of Grimes, based on MR's Personalized Financial Plan, included, in part, the following:
 - a. That MR's asset allocation should be 50% fixed and 50% equity;
 - b. That MR roll-over a 403(b) annuity (with no surrender charges) to an Equity-Indexed Annuity IRA at Fidelity and Guaranty (with a 10-year surrender charge period) [Exhibit F];
 - c. That MR roll-over a second 403(b) annuity (with no surrender charges) to an IRA at AnnuityCare [Exhibit G]; and
 - d. That MR liquidate 100% of MR's Vanguard mutual funds and purchase Dimensional Fund Advisors mutual funds through Barrington.
22. Barrington employed a solicitor, Grimes, who the Division alleges acted as an unregistered investment adviser representative and violated Sections 409.4-404(a), and 409.5-501, RSMo. (Cum. Supp. 2005).
23. The Commissioner has jurisdiction over these matters pursuant to the Missouri Securities Act of 2003, Chapter 409, *et seq.*
24. The Commissioner has authority to enter this Consent Order pursuant to § 409.6-604(h), RSMo, Supp. 2005, which provides that the Commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this Act.
25. An order is in the public interest and consistent with the purposes intended by this act. See § 409.6-605(b), RSMo. (Cum. Supp. 2005).

ORDER

WHEREAS, the Commissioner, after consideration of the stipulations set forth above and on the consent of Respondent and the Division, finds the following Order to be in the public interest and necessary for the protection of public investors and consistent with the provisions of Chapter 409, RSMo, *et seq.*

NOW, THEREFORE, it is hereby Ordered that:

1. Respondent Barrington shall sever all contractual ties and business relationships with Grimes, effective immediately. In addition, Barrington shall request the removal of all references to Barrington and/or David Ware from any and all marketing materials, websites, brochures, and seminar materials used by Grimes.
2. Respondent will require that all its Missouri solicitors register as investment adviser representatives in the State of Missouri.
3. Respondent Barrington shall pay to the Missouri Investor Education and Protection Fund the amount of ten thousand dollars (\$10,000). This amount shall be sent to the Division and shall be made payable to the Missouri Secretary of State's Investor Education and Protection Fund and shall be due and payable within thirty (30) days

from the date of this Consent Order. The Division will forward these funds to the Investor Education and Protection Fund.

4. Respondent will reimburse the Division for the costs of the investigation in the amount of four thousand dollars (\$4,000). This amount shall be sent to the Division and shall be made payable to the Missouri Secretary of State's Investor Education and Protection Fund and shall be due and payable within thirty (30) days from the date of this Consent Order. The Division will forward these funds to the Investor Education and Protection Fund.
5. Respondent will be responsible for its own costs and attorney fees.

SO ORDERED:

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,
MISSOURI THIS 7TH DAY OF FEBRUARY, 2007.

ROBIN CARNAHAN
SECRETARY OF STATE

(Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

Consented to by:

Mary Hosmer
Assistant Commissioner of Securities
Missouri Securities Division

BARRINGTON CAPITAL MANAGEMENT, INC.

David Ware, President

Approved as to Form

Jeffrey M. Gershon

[\[1\]](#) From on or about August, 1979, until February 13, 2004, Grimes was a Missouri-registered broker-dealer agent.

